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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR  | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|-----------------------|---------------------|------------------|
| 10/777,963      | 02/13/2004  | Mitchell Adams Cogert |                     | 6046             |

7590  
07/12/2005  
Mitchell Cogert  
45 Red Hill Circle #P  
Tiburon, CA 94920

EXAMINER

NGUYEN, KIM T

ART UNIT PAPER NUMBER

3713

DATE MAILED: 07/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/777,963

Applicant(s)

COGERT, MITCHELL ADAMS

Examiner

Kim Nguyen

Art Unit

3713

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26 April 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

Examiner acknowledges receipt of the amendment on 4/26/05.

According to the amendment, claims 2-19 have been added, and claims 1-19 are pending in the application.

### ***Specification***

1. The amendment filed 4/26/05 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: specification page 8, part B; page 9, part C, E, F, K; page 10, part M-P, R; page 14, last paragraph; page 15, lines 1-10; and from page 16, section B through page 19. Further, Figures 1-3 contain new matter such as fold with insurance, get back 40% (20%) of his all-in wager less the insurance premium in Fig. 1, CALL, RAISE, etc. feature in Figs. 2-3.

Applicant is required to cancel the new matter in the reply to this Office Action.

### ***Claim Objections***

2. Claims 1-2, and 8 are objected to because of the following informalities:

- a) In claim 1, limitation (e), the claimed limitation "the option" should be corrected to "an option".
- b) In claim 1, limitation (l), the claimed limitation "the winning" should be corrected to "a winning".
- c) In claim 1, limitation (l), the claimed limitation "with steps (a)" should be corrected to "with step (a)".
- d) In claims 1, 2, 8, a punctuation ";" should be inserted at the end of each limitation (a), (b), etc. in claim 1, and at the end of each step of claims 2 and 8. Further, the capital letters used at the beginning of each step such as Dealing, Requiring, etc. should be changed to small letters such as dealing, requiring, etc.
- e) In claim 2, step c, the claimed "Step 1(b)" should be corrected to "step b".
- f) Claims 5-6 and 9 are objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim should refer to other claims in the alternative only, and/or, can not depends on any other multiple dependent claims, or reference two sets of claim of different features . See MPEP § 608.01(n). Accordingly, the claims 5-6 and 9 have not been further treated on the merits.
- g) In claim 12, line 1, the claimed limitation "further including step (e)" fails to further limit the subject matter of the previous claim 2, because step (e) has been recited in claim 2.

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

a) In claim 1, limitation (c), limitation (e), , limitation (f), limitation (h), limitation (i), the claimed limitation “***the*** players remaining in ***the*** hand” is ambiguous. What is the meaning of “the players remaining in the hand”? It is not clear if “the players remaining in the hand” refers to “the one or more players who wager all his money” in line 4, or “all the players who receive the two face down cards in line 2. Further, “***the*** players” and “***the*** hand” lack of antecedent basis.

b) In claim 1, limitation (d), the claimed limitation “any player” is ambiguous. It is not clear if “any player” refers to “any player among the one or more players” in line 4, or “any player among the players who receive the two face down cards” in line 2.

c) In claim 1, limitation (e), limitation (h), the claimed limitation “all cards” is ambiguous. It is not clear if the “all cards” implies “all the two face down

cards of each of the one or more players", or "all the two face down cards of all the players who receive the two face down cards".

d) In claim 1, limitation (l), the claimed limitation "all players remaining in the hand" is ambiguous. What is the meaning of "all players remaining in the hand"? It is not clear if "all players remaining in the hand" refers to "all the one or more players who wager all his money" in line 4, or "all the players who receive the two face down cards" in line 2.

e) Regarding claim 18, line 4, the phrase "including but not limited to" renders the claim indefinite because the claim includes elements not actually disclosed (those encompassed by "including but not limited to"), thereby rendering the scope of the claim unascertainable. See MPEP § 2173.05(d).

g) Regarding claims 2-3, 8, 9, and 15, the phrase "i.e.," renders the claim indefinite because it is unclear whether the limitation(s) following the phrase are part of the claimed invention. See MPEP § 2173.05(d). Further, in claim 15, the phrase "however, in the preferred embodiment" renders the claim indefinite because it is unclear whether the limitation(s) following the phrase are part of the claimed invention.

h) The remaining claims are rejected as being dependent on the rejected base claim.

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claims 2-19 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The newly added claims contain new matter. In particular, the disclosure as originally filed does not disclose all wagers held in a community fund known as the "pot", subsequently fold with insurance, receive back from the pot an amount equal to the recovery percentage less a specific insurance premium, ect. set forth in claim 2. Disclosure is also lacking including a passive dealer, mechanism, game sponsor, small blind, blind folds, big blind, call, raise, insurance premium, etc. set forth in claims 3-19.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**8. Claims 2-4, 7-8, and 10-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over McDoniel (US 5,752,702) in view of Garrod (US 6,637,747).**

As per claim 2-4, 7, 10-16, McDoniel discloses a method for playing poker game. The method comprises dealing two cards faced down, conducting a round of betting after the two cards have been dealt, exposing the two cards if there is no betting, dealing three community cards face-up, allow the player to bet, if no more betting, exposing the two face-down cards , dealing one community card face-up, exposing the two cards if there is no betting, exposing the two face-down cards, dealing one community card face-up, and determining a winner (col. 4, lines 25-67; col. 5, lines 1-12; and col. 6, lines 23-64). McDoniel does not explicitly disclose that permitting the player who elects to fold after three community face-up cards is dealt to get back 40% of his wager, or the player who elects to fold after the first time of one community card is dealt to get back 20% of his wager. However, Garrod discloses that returning to the player who selects to fold a predetermined portion of his wager (col. 5, lines 61-64; col. 6, lines 17-19; and col. 8, lines 25-31). It would have been obvious to a person of ordinary skill in the art at the time the invention

was made to apply returning a percentage of amount of the wager to the player when the player decide to fold as taught by Garrod to the card game of McDoniel in order to allow the player to decide whether to continue or surrender the game at any point without losing all the wager.

As per claim 8, McDoniel discloses allowing the player to bet, raise, call or withdraw from the hand (col. 3, lines 59-60 and col. 4, lines 28-31).

As per claim 17, McDoniel discloses awarding the player with the highest ranked poker hand (col. 5, lines 11-13).

As per claim 18-19, playing a card game on a console or stand-lone gaming machine located in a gaming environment, playing a game on a network or over the Internet using wire or wireless networking equipment would have been well known to a person of ordinary skill in the art at the time the invention was made.

***Allowable Subject Matter***

9. Claim 1 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

10. The following is a statement of reasons for the indication of allowable subject matter:

Prior arts of record do not disclose a method for playing poker card game which comprises the steps performed in detailed and in order as substantially

recited by claim 1. Specifically, each player wagers after having been dealt two cards face down, when no more betting is possible, the two face down cards of each player are exposed and the players have an option of folding his hand and getting back 40% of his wager if he folds after the first three community cards are revealed, or 20% of his wager if he folds after the fourth community card is revealed, when the fifth community card is revealed, the two face down cards of each player are exposed to determine which player has a winning poker hand, the poker hand comprises the two cards dealt to the player plus the five community cards.

### ***Response to Arguments***

The amended specification which contains new matter does not overcome the 112-second paragraph rejection on claim 1 set forth in the office action issued on 9/21/04. The 112-second paragraph rejection on claim 1 is maintained in this office action.

Applicant's arguments with respect to claims 2-19 have been considered but are moot in view of the new ground(s) of rejection.

11. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH

shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action. Any response to this final action should be mailed to:

Box AF:

Commissioner of Patents and Trademarks

Washington, D.C. 20231

Or faxed to:

(703) 872-9306, (for formal communications; please mark

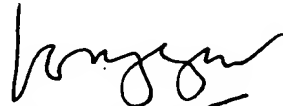
"EXPEDITED PROCEDURE")

Hand-delivered responses should be brought to Crystal Plaza II,  
Arlington, VA Second Floor (Receptionist).

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kim Nguyen whose telephone number is (571) 272-4441. The examiner can normally be reached on Monday-Thursday from 8:30AM to 5:00PM ET.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Xuan Thai, can be reached on (571) 272-7147. The central official fax number is (703) 872-9306.

kn  
Date: July 7, 2005



Kim Nguyen  
Primary Examiner  
Art Unit 3713